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IN THE SUPREME COURT OF THE
UNITED STATES

October Term, 1974

NO. 73-1195

SAMUEL SCHNEIDEMAN, doing business as
ADEPTCO, Petitioner,

v.

RAILWAY EXPRESS AGENCY, INC.,
a corporation;
AMERICAN PRESIDENT LINES, LTD.,
a corporation, Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF FOR RESPONDENT RAILWAY EXPRESS AGENCY IN OPPOSITION

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March 4, 1974

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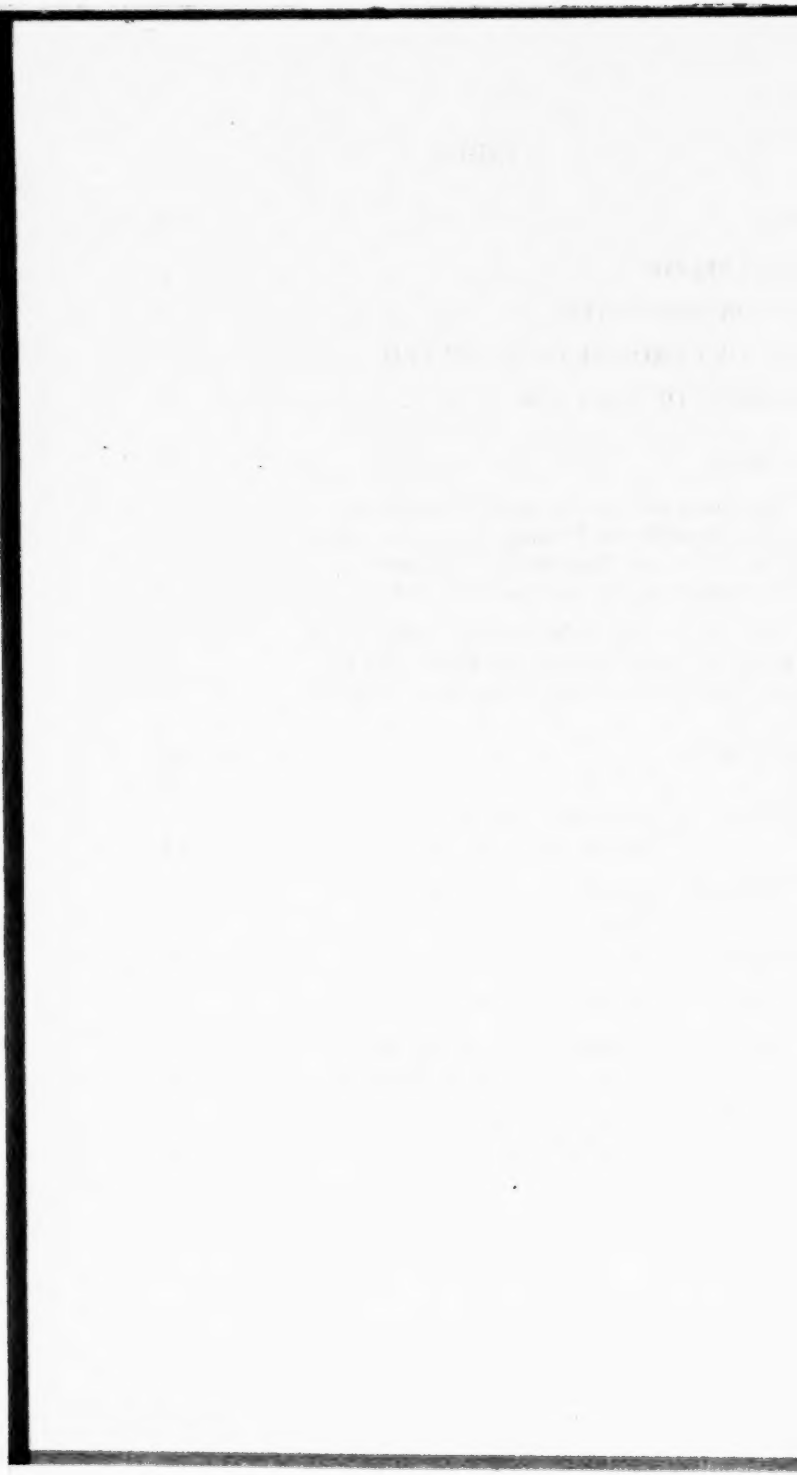

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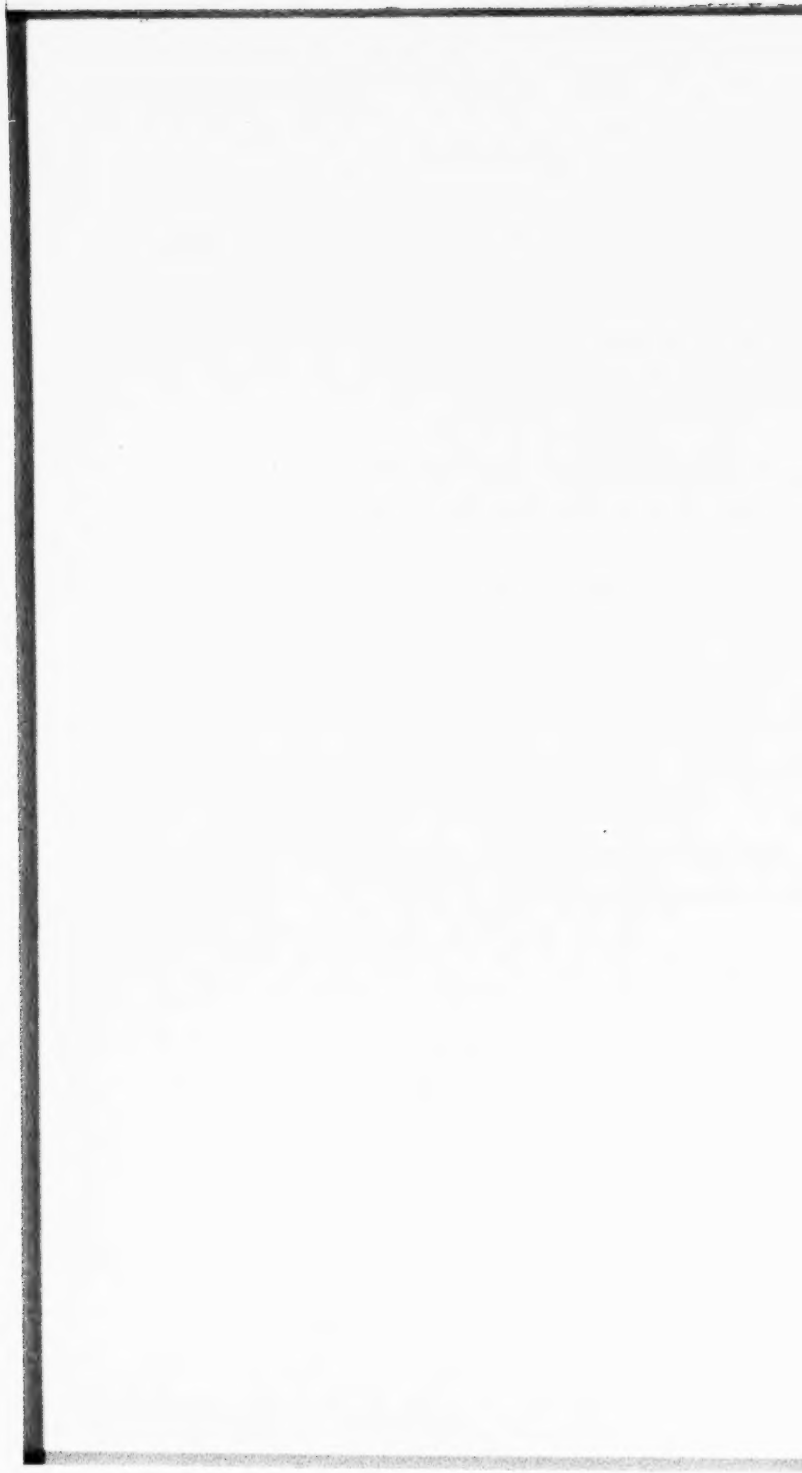

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SAMUEL SCHNEIDEMAN, doing business as ADEPTCO,

Petitioner,

v.

RAILWAY EXPRESS AGENCY, INC., a corporation;
AMERICAN PRESIDENT LINES, LTD., a corporation,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF RESPONDENT RAILWAY EXPRESS AGENCY IN OPPOSITION

OPINION BELOW

No reported opinion was rendered by the District Court for the Northern District of California or by the Ninth Circuit Court of Appeals. The District Court's judgment appears in Appendix B attached hereto, and the Memorandum entered by the Court of Appeals appears in Appendix B of the Petition.

QUESTION PRESENTED

Has the United States Court of Appeals for the Ninth Circuit sanctioned such a departure from the accepted and usual course of judicial proceedings by the United States District Court for the Northern District of California so as to call for an exercise of this Court's power of supervision, by upholding the District Court's summary judgment in favor of REA and against Petitioner and in the process:

1. Agreeing with the finding that no genuine issue as to any material fact existed for determination by the District Court; and

2. Not finding that Petitioner was grossly prejudiced by the notice given him by the District Court.

STATUTORY PROVISION INVOLVED

The pertinent provisions of Federal Rule of Civil Procedure 56 are set forth in the Petition at pp. 3-4.

STATEMENT OF THE CASE

On March 13, 1969, at San Francisco, California the Petitioner delivered one (1) carton weighing forty-one (41) pounds, to Respondent RAILWAY EXPRESS AGENCY, hereinafter referred to as "REA," for shipment to Tokyo, Japan. At that time Petitioner received from REA a Uniform Express Receipt No. P001980 (non-negotiable), dated March 13, 1969, and this receipt had printed on it:

> "Note--The Company will not pay over $50.00 in case of loss, or $.50 per pound, actual weight, for any shipment in excess of 100 pounds, unless a greater value is declared and charges for a greater value paid."

This receipt also had a declared value of $50.00 typed on it and the printed matter on the receipt also stated:

> "Value herein declared by Shipper (ADEPTCO) (fictitious name of Petitioner) to be that entered in space hereon reading 'Declared Value'".

Subsequently, the Petitioner received REA Uniform Through Export Bill of Lading B/L No. 697174, dated March 13, 1969, which had spaces for entry of "Shipper's Declared Value in U.S. Dollars" at two (2) locations. One of the spaces was marked "For Customs Only" and this space contained an entry of $50.00 and the other space marked "For Carriage" was left blank. There was also an entry made to the effect that the shipper requested Maritime Insurance in the amount of $50.00.

The REA Bill of Lading No. 697174 contained the printed matter set forth in Appendix A attached hereto.

All of the charges made by REA for transportation (land and ocean) and handling were based on the declared value of $50.00.

On March 19, 1969, the carton was delivered by REA to American President Lines (hereinafter "APL") for ocean carriage from San Francisco to Yokahama, Japan. APL received said carton and issued its Bill of Lading No. 0537 to REA, naming REA as shipper for carriage of the carton on the S.S. President Van Buren, "as agents for shipper." REA was also named as Forwarding Agent in said Bill of Lading.

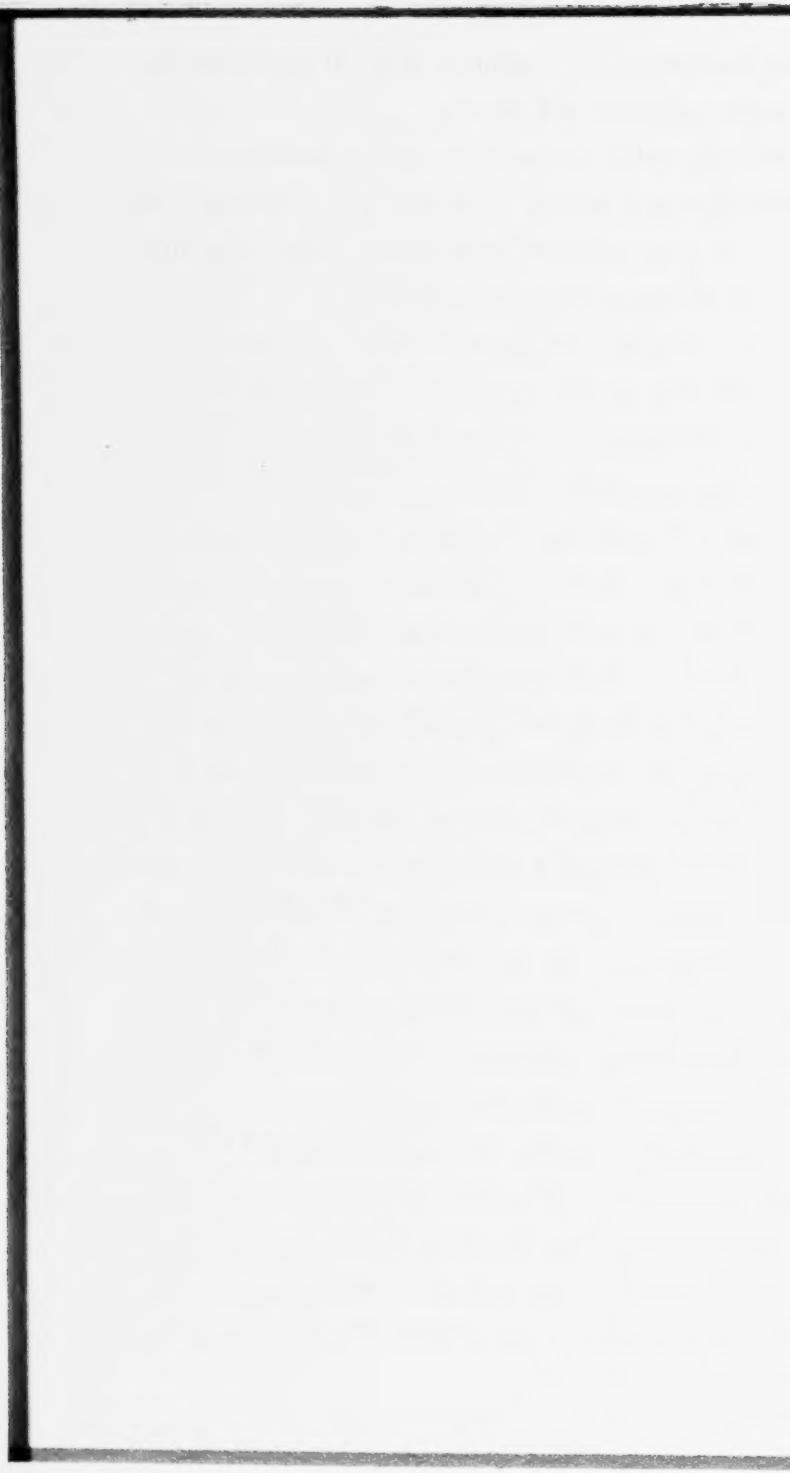
APL's Bill of Lading No. 0537 contained a typed entry stating "NO EXPORT DECS. VALIDATION REQUIRED VALUE $50.00." The Bill of Lading also contained language pursuant to the Carriage of Goods by Sea Act (46 U.S.C. Section 1300-1315)

limiting Respondent APL's liability to $500.00 per package unless a higher valuation was declared.

APL collected its transportation charges based upon the declared valuation of $50.00. At no time prior to making a claim for recovery of the carton did the Petitioner declare a valuation higher than $50.00 to either APL or REA.

The S.S. President Van Buren arrived in Yokahama, Japan, on April 27, 1969, but the carton was not delivered to the designated receiver. On October 14, 1969, REA delivered to Petitioner a draft in the sum of $50.00 as full payment for the loss suffered by Petitioner. Formal claim was filed by Petitioner as against REA on December 15, 1969. This claim, except for the payment of the $50.00 as set forth above, was denied.

On May 7, 1970, Petitioner filed a complaint in the District Court for the Northern District of California naming REA as Defendant. The complaint was subsequently dismissed by order of the court and a first amended complaint was filed on July 24, 1970, naming REA and APL as Defendants. REA subsequently answered and filed a cross claim in indemnity against APL. A pretrial conference was scheduled for October 27, 1971, and all parties presented pretrial statements. All parties attended the scheduled pretrial conference but were unable to reach an accord on an agreed statement of facts, and subsequently, the court rescheduled the pretrial conference for March 9, 1972, and scheduled a court trial for April 10, 1972. Petitioner filed a "Superseding Pretrial Statement" on January 31, 1972, and a pleading entitled "Joinder of Claim by Plaintiff Against Defendant, RAILWAY EXPRESS AGENCY' INC.' (REA) for Tort."



This motion also was scheduled for hearing on March 9, 1972. On March 3, 1972, APL filed an Offer of Judgment which was accepted by Petitioner and a judgment was entered against APL on March 15, 1972, in the amount of $500.00.

On March 9, 1972, in open court, at a combined hearing of the scheduled pretrial conference and the motion of joinder, referred to above, REA made an oral motion for summary judgment. (Appendix D pp. 33 of the Petition). At that time, the court ordered the Petitioner, who was present in the courtroom, to show cause on March 15, 1972, why said motion for summary judgment should not be granted.

After the hearing of March 9 and prior to the hearing on March 15, 1972, the Petitioner filed the following pleadings in response to the order to show cause:

1. "Response To Order To Show Cause Against Summary Judgment Trial" filed March 10, 1972;

2. "Affidavit By Plaintiff In Re Oral Order Of The Court, March 9, 1972" filed March 13, 1972;

3. "Request Mandamus By Plaintiff Upon The Judge By 28 U.S.C. Section 1361 Accord" filed March 13, 1972;

4. "Certificate of Samuel Schneideman" filed March 13, 1972.

On March 15, 1971, at the time of hearing, and all parties being in court, the court first found that based upon Petitioner's own statement of evidence contained in his "Superseding Pretrial Statement", there were no evidence to establish liability on the part of REA as against Petitioner, and then the court granted

REA's motion for summary judgment. On May 25, 1972, the court entered the judgment, a copy of which is reproduced in its complete form in Appendix B hereto. The court further by Order dated and filed May 23, 1972, disposed of all matters pending before the court. A copy of this Order is reproduced in Appendix C hereto. Notice of the granting of this Order was given to Petitioner on May 31, 1972, and this notice is reproduced in Appendix D hereto.

Petitioner sought to have the District Court review its order granting the summary judgment by the filing of various pleadings rearguing his case. Finally he filed his appeal with the United States Court of Appeals for the Ninth Circuit, filed briefs and various other pleadings, and after the Court of Appeals upheld the District Court's action, filed this Petition for Writ of Certiorari. In all, after the hearings of March 15, 1972 and the granting of the motion for summary judgment, Petitioner filed 14 pleadings either before the District Court or the Court of Appeals not related to his appeal. In addition he filed briefs before the Court of Appeals and a Petition for Reconsideration.

The documents and pleadings argued every detail of his case on the merits and his alleged prejudice by the manner in which the District Court granted the Summary Judgment. No stone was left unturned by Petitioner. A chronological list of the pleadings and documents filed by Petitioner from March 15, 1972 to the filing of the Petition for Certiorari is set forth, in brief, in Appendix E attached hereto.

The decision of the Court of Appeals is reproduced in Appendix B of Petition pp. 25-26. The Court of Appeals, after

a review of all documents and records before it concluded in its memorandum opinion that "[t]here was no triable issue of fact properly before the court and summary judgment was appropriate." Circuit Judges Duniway, Hufstedler and Wallace were unanimous in this decision.

After his Petition for Reconsideration was rejected, Petitioner filed this Petition for Writ of Certiorari, a copy of said Petition having been received by counsel for REA on February 4, 1974.

ARGUMENT

I

THE COURT OF APPEALS ACTED PROPERLY IN AGREEING WITH THE FINDING THAT NO GENUINE ISSUE AS TO ANY MATERIAL FACT EXISTED FOR DETERMINATION BY THE DISTRICT COURT.

"A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor." U.S. Sup. Ct. Rule 19(1).

No such reasons have been shown by Petitioner and none exist. Petitioner alleges as his only ground for review on writ of certiorari that the decision of Court of Appeals in upholding the District Court's Summary Judgment is conduct justifying this Court's intervention under the following language of U.S. Supreme Court Rule 19 (l)(b)

" . . . or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a

departure by a lower court, as to call for an exercise of this Court's power of supervision."

It is obvious from a review of the record filed herein that the Court of Appeals followed the usual and accepted procedure in upholding the District Court's judgment. The District Court had before it at the time it granted REA's motion for summary judgment, the following:

1. All pleadings including Petitioner's "Superseding Pre-Trial Statement by Plaintiff" to which the court specifically referred in its comments prior to granting the motion for summary judgment.

2. Pertinent shipping documents attached to REA's and APL's Answers as follows:

a. REA Express Receipt No. POO1980 referred to above in the Statement of Facts;

b. REA Bill of Lading No. 697174 referred to above in the Statement of Facts;

c. APL Bill of Lading No. 0537 referred to above in the Statement of Facts.

3. All filings made by Petitioner and referred to hereinabove.

After granting the judgment the District Court reviewed all of the varied documents filed therein. Petitioner reargued his case (Appendix E) and the court upheld its decision. It determined no genuine issue of any material fact existed.

On appeal, the Court of Appeals had before it the complete record of the case. It also had Petitioner's briefs and all of the varied pleadings filed by Petitioner. (Appendix E)

After reviewing the whole case and all pleadings and documents the Court of Appeals upheld the District Court's judgment. Thereafter, Petitioner filed a Petition for Reconsideration and other documents rearguing his case and their decision was upheld. Petitioner obviously disagrees with the judgments of the District Court and the Court of Appeals, but Petitioner has not shown such a departure from the "accepted and usual course of judicial proceedings" so as to call for the intervention of this Court. In making its determination, the Court of Appeals clearly followed precedent.

Though an appellate court on review of a summary judgment, should not look the other way to ignore the existence of genuine issues of material fact, it is not in the best interests of judicial administration, to strain to find the existence of such genuine issues where none exist. Kirk v. Home Indemnity Co., 7th Cir. Ill. 1970, 431 F. 2d 554, 560.

Not every issue of fact, however genuine, precludes entry of summary judgment, and it is only a genuine issue of material fact which may have that effect. U.S. v. One Device, More or Less, E.D. Pa. 1963, 224 F. Supp. 265.

It is submitted that summary judgment was properly granted. Poller v. CBS Inc., 368 U.S. 464, 7 L.Ed. 2d 458, 82 S. Ct. 486 (1962).

The Petitioner points to the Pretrial Statements attached to his petition (Appendix C pp. 26-28) and argues that the Court of Appeals must have acted improperly since the statements set out the facts which are in dispute. The Pretrial

Statement of REA merely acknowledges that the Petitioner had made certain contentions which were denied by REA. A pre-trial statement cannot be interpreted as any indication that the contentions therein raise genuine material issues of fact. This is for a court to determine in normal course by a pretrial order or as the District Court did in this case by its judgment.

The assertion by the Petitioner that REA's Offer of Judgment may be taken as evidence of liability on its part, is patently erroneous. First of all, the offer being part of settlement negotiations is not properly admissible as evidence; and secondly, a minimal offer in a case where legal expenses had already run several times the amount offered, can hardly be termed an acknowledgement of liability on behalf of REA.

It is submitted that the Court of Appeals acted well within the accepted and usual course of judicial proceedings in affirming the District Court's finding that no triable issue of fact was before it.

II

THE COURT OF APPEALS ACTED PROPERLY IN NOT FINDING THAT PETITIONER WAS PREJUDICED BY THE NOTICE GIVEN HIM BY THE DISTRICT COURT.

Petitioner contends that gross procedural error such as to call for the intervention of this Court was committed by the District Court in that proper notice was not given. The alleged procedural error is in not strictly following the notice requirements of Rule 56 of the Federal Rules of Civil Procedure.

To satisfy the requirements of due process, notice must be of such a nature as to reasonably convey the required information and it must afford a reasonable time for those interested to make an appearance. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306,70 S. Ct. 652, 94 L.Ed. 2d 865. Here the notice given to the Petitioner was better calculated to inform the Petitioner than the written notice called for under Rule 56 (b). Because of Petitioner's physical presence in the courtroom, none of the uncertainties and delays associated with mailed notice could occur.

As to the question of whether the Petitioner had adequate opportunity to respond, it is clear that Petitioner understood what was required of him, and he in fact presented to the court a full and complete argument of his position (see documents filed between March 9 and March 15, 1972 - Statement of facts.) A review of the documents filed after the granting of the motion, will show several further complete presentations of Petitioner's views to the District Court. (See Appendix E). His position was also fully presented to the Court of Appeals on several occasions as can be readily seen from a review of documents filed with that court (Appendix E). For all of Petitioner's rhetoric, he has failed to show that he was prejudiced by the notice given or that it was an abuse of discretion for the District Court to follow the procedure it did. At best, the asserted procedural change was merely a technical variation of the Rules of Civil Procedure. The action of the Court of Appeals in approving the District Court's procedure cannot be such as to call for this Court's intervention under the circumstances presented.

Petitioner initially chose to act in propria persona, then hired respected counsel who represented Petitioner from at least July 24, 1970, until January 19, 1972. From that date, Petitioner again voluntarily chose to act in propria persona. He presented his case to both the District Court and the Court of Appeals with great vigor and in volume. To now argue he was prejudiced by his voluntary action in choosing not to have an attorney at all stages of this proceeding, is unfair to the courts and Respondent, all of whom patiently considered and replied to his arguments and filings. It would appear that Petitioner has more than adequately stated and presented his case.

CONCLUSION

It is respectfully submitted that the essence of Petitioner's Petition for a Writ of Certiorari is that the lower courts have erred and he seeks by this Petition to have yet another review on appeal of his case. This court has consistently refused to undertake such a course of action. U.S. v. Johnston, 268 U.S. 220, 45 S. Ct. 496, 69 L. Ed. 925.

For the reasons stated above, it is respectfully submitted that this Petition for Writ of Certiorari should be denied.

March 4, 1974

Respectfully submitted

James H. Boland
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Of Counsel

APPENDIX A

REA BILL OF LADING NO. 697174

The face of REA B/L No. 697174 contained the following printed matter:

"ATTENTION OF SHIPPER.

The terms and conditions of the Order Bill of Lading under which this shipment is accepted are printed on the back hereof."

Clause 2 on the back of REA B/L No. 697174 stated:

"2. in consideration of the rate charged for carrying the property described in this bill of lading, which is dependent upon the value thereof and is based upon an agreed valuation of not exceeding fifty dollars for any shipment of 100 pounds or less and not exceeding fifty cents per pound, actual weight, for any shipment in excess of 100 pounds, unless a greater value is declared at the time of shipment, the shipper agrees that the express company shall not be liable in any event for more than fifty dollars for any shipment of 100 pounds or less, or for more than fifty cents per pound, actual weight, for any shipment weighing more than 100 pounds, unless a greater value is stated herein. Unless a greater value is declared and stated herein the shipper agrees that the value of the shipment is as last above set out and that the liability of the express company shall in no event exceed such value. This provision, however, shall not preclude the shipper from declaring the true value of the property or contents of the shipment and in such event the tariff charges shall be computed on the basis of said declaration of actual value and the liability of the express company shall not exceed such actual declared value."

APPENDIX B

JUDGMENT OF UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA No. C. 70-967 RHS

This matter came before this Court on March 15, 1972, Plaintiff, SAMUEL SCHNEIDEMAN, dba ADEPTCO, appearing in pro per, RAILWAY EXPRESS AGENCY, INC., a corporation, appearing by DREHER, DREHER & GARFINKLE, and Eugene Garfinkle, Esq., its attorneys, and AMERICAN PRESIDENT LINES, a corporation, appearing by James H. Seymour, Esq., its attorney, and a motion for summary judgment having been made by RAILWAY EXPRESS AGENCY, INC., by Eugene Garfinkle, and the motion for summary judgment in the entitled matter being properly before this Court, and good cause appearing therefor, based on the pleadings, files and records before this Court:

IT IS HEREBY ORDERED AND ADJUDGED as follows:

1. The motion for summary judgment made on behalf of the defendant, RAILWAY EXPRESS AGENCY, INC., is granted, and the complaint and amended complaint filed by SAMUEL SCHNEIDEMAN, dba ADEPTCO, plaintiff, is dismissed as against RAILWAY EXPRESS AGENCY, INC.

2. The cross-complaint filed on behalf of RAILWAY EXPRESS AGENCY, INC. against AMERICAN PRESIDENT LINES, a corporation, is dismissed without prejudice.

3. Costs are awarded in the favor of Defendant, RAILWAY EXPRESS AGENCY, INC., as against Plaintiff.

DATED: May 23, 1972.

(signed) ROBERT H. SCHNACKE
United States District Judge

Entered: May 25, 1972 -- Docket Number 76

APPENDIX C

ORDER OF UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA
No. C. 70-967 RHS

This matter came before this Court on May 17, 1972, Plaintiff, SAMUEL SCHNEIDEMAN, dba ADEPTCO, appearing in pro per, RAILWAY EXPRESS AGENCY. INC., a corporation, appearing by DREHER, DREHER & GARFINKLE, and Eugene Garfinkle, Esq., its attorneys, and AMERICAN PRESIDENT LINES, a corporation, appearing by James H. Seymour, Esq., its attorney, and the Court having considered the following motions made by Plaintiff and presently pending before this Court:

1. Motion for New Trial;
2. Amendment to the Court's Findings;
3. Amendment to the Judgment;
4. Joinder of Claim by Plaintiff against Defendant, RAILWAY EXPRESS AGENCY, INC. (REA) for Tort;
5. Motion for Change of Venue.

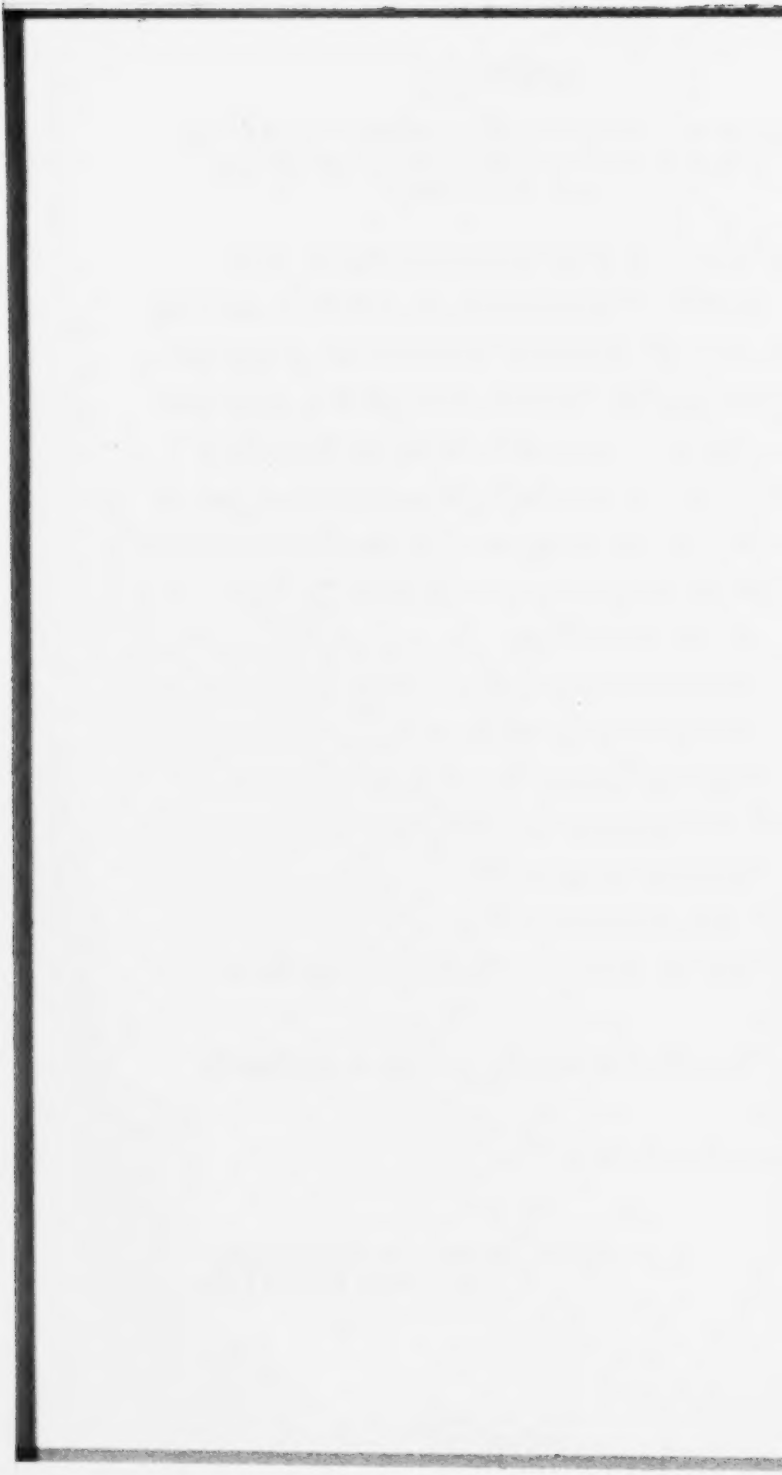
Good cause appearing therefor,

THIS COURT HEREBY ORDERS AND ADJUDGES as follows:

1. The motions as set forth above, made by Plaintiff, are denied.

Dated: May 23, 1972.

(signed) ROBERT H. SCHNACKE
United States District Judge



APPENDIX D

NOTICE OF GRANTING ORDER SERVED BY MAIL ON MAY 31, 1972 AND FILED JUNE 7, 1972

To each party and to the attorney of record for each party in this action:

PLEASE TAKE NOTICE that on May 23, 1972, the above Court entered an order denying motions made by Plaintiff and presented before this Court on May 17, 1972.

The motions denied by this Court are more particularly described as follows:

1. Motion for New Trial;
2. Amendment to the Court's Findings;
3. Amendment to the Judgment;
4. Joinder of Claim by Plaintiff Against Defendant, RAILWAY EXPRESS AGENCY, INC. (REA) for Tort;
5. Motion for Change of Venue.

DATED: May 31, 1972.

DREHER, DREHER & GARFINKLE

(signed) EUGENE GARFINKLE
Attorneys for Defendant, RAILWAY EXPRESS AGENCY.

APPENDIX E

Pleadings and Documents filed by Petitioner, in brief, from March 15, 1972, to the filing of the Petition for Certiorari:

A Seeking to have the District Court Review its Summary Judgment

1. "Notice of Motions and Motions In Findings By The Court, Rule 52(b), And For New Trial Or Amended Judgment By Rule 59 (a)(e)", dated and filed March 24, 1972;

2. "Memorandum In Support Of Motions In Rules 52 and 59" dated March 24, 1972 and presumably filed on that date;

3. "Affidavit Recusing Judge, and Embodying Move For Change of Venue," dated April 5, 1972 and presumably filed on that date;

4. "Certificate Of Samuel Schneideman" dated and filed April 5, 1972;

5. "Certificate Of Samuel Schneideman" (In Support of Motions In Rule 59 Filed March 24, 1972") dated and filed April 12, 1972;

6. "Affidavit Of Plaintiff" ("In 28 U.S.C. Section 144 Recusation of Judge") dated May 3, 1972, and presumably filed on that date;

7. "Certificate Of Samuel Schneideman" ("In 28 U.S.C. Section 144 Recusation of Judge"), dated and filed May 4, 1972.

The court by order dated and filed on April 7, 1972, first ordered stricken and dismissed certain of the above fillings and

then admonished Plaintiff against filing further "false and frivolous papers." By order dated and filed May 5, 1972, the court struck the filings of May 4, 1972, and held Plaintiff in contempt of court for violation of the prohibition of the order of April 7, 1972.

B Documents filed to Commence Appeal

Petitioner filed the following documents with the District Court:

1. "Supersedeas Surety In Appeal" dated and filed May 11, 1972.

2. "Notice Of Appeal To The Ninth Circuit Court From An Order Of This Court" dated and filed May 11, 1972;

3. "Motion For Stay Of Order Pending Appeal" dated and filed May 11, 1972.

Upon the "Motion For Stay" being denied, Petitioner filed with the United States Court of Appeals For the Ninth Circuit the following document: "Stay Or Injunction Motion For Supersedeas With Application To A Single Judge" dated and filed on May 15, 1972. This motion was denied by Order filed May 16, 1972.

Thereafter, Petitioner filed with the District Court documents entitled:

1. "In Transmission Of Record On Appeal" dated and filed on May 17, 1972;

2. "Supplementary Notice of Appeal" dated and filed May 31, 1972;

3. "Request That Court Reporter Deliver Transcripts To The Clerk Of The Court" dated and filed June 7, 1972;

4. "Supplementary Notice of Appeal" dated and filed June 7, 1972.

C Documents filed with the United States Court of Appeals for the Ninth Circuit on Appeal and Orders

An opening brief was filed by Petitioner on August 7, 1972, and a reply brief was filed by REA on September 21, 1972. Petitioner's closing brief was filed September 2, 1972. Thereafter, Petitioner filed the following documents with the Court of Appeals:

1. On September 29, 1972, document entitled "Motion By Appellant To Strike Nunc Pro Tunc, Items From The Judgment Of Court Below As Being Inadequately Stated, Abortive To Purpose And Anomalously Invalid." Attached to this document was a Proposed Order.

2. Also on September 29, 1972, a document entitled "Motion By Appellant To Strike Nunc Pro Tunc, Item From An Order Of Court Below As False." A Proposed Order was also attached to this "Motion".

3. On October 12, 1972, a document entitled "Appellant's Motion For Sanctions Against Appellee, Railway Express Agency's Falsehoods, With Move To Strike Same And False-Based Inferences And Implications From Its Pleadings."

4. On October 16, 1972, a document entitled "Appellant's Reply To Appellee Railway Express Agency, Inc.'s Opposition To Appellant's Motion For Sanctions."

On October 17, 1972, the Court of Appeals issued its Order denying Petitioner's "motions." A copy of this order is reproduced in Appendix F hereto.

5. On November 20, 1972, a document entitled "Motion By Appellant For Leave To Augment Appellant's Reply Brief To Appellee Railway Express Agency, Inc." This motion was denied by the Court of Appeals on November 22, 1972.

6. On October 3, 1973, pursuant to Court of Appeal Rule 3(a) document entitled "Supplement Support Of Appellant's Two Briefs."

7. On October 4, 1973, a document entitled "Affidavit By Plaintiff-Appellant In Rebuttal Of Perjurious Filings By The Defense."

The Court of Appeals filed its Memorandum opinion on October 15, 1973, denying Petitioner's appeal, and upholding the District Court's judgment. Thereafter Petitioner has filed with that Court:

1. On October 29, 1973, a "Petition For Rehearing", which Petition was denied by court order filed November 9, 1973.

2. On December 13, 1973, a document arguing that the memorandum opinion of the Court of Appeals was wrong and seeking to amend it, and attaching a proposed modified "Amended Memorandum."

APPENDIX F

ORDER OF NINTH CIRCUIT COURT OF APPEALS
NO. 72-1859

Before: MERRILL and DUNIWAY, Circuit Judges

Appellant has moved to strike portions of the judgment of the District Court nunc pro tunc as being inadequately stated and as being frivolous, and for sanctions to be imposed against appellees and to strike portions of appellees' brief. All of appellant's motions in these respects are denied.

(signed) _____

(signed) _____
Circuit Judges

CERTIORARI DENIED